



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### EPA-R08-OAR-2011-0636; FRL- 9636-6

#### Approval and Promulgation of State Implementation Plans; State of Utah; Smoke Management Requirements for Mandatory Class I Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Utah on September 29, 2011. The September 29, 2011 revision establishes rule R307-204 of the Utah Administrative Code (UAC). R307-204 contains smoke management requirements for land managers within the State of Utah as required by the regulations for regional haze (RH). The September 29, 2011 submittal supersedes and replaces R307-204 submitted as part of the State's December 12, 2003 RH SIP. The September 29, 2011 submittal also supersedes and replaces the State's May 8, 2006 submittal of R307-204.

EPA is also partially approving a SIP revision submitted by the State of Utah on May 26, 2011. Specifically, EPA is proposing to approve section XX.G of the State's RH SIP, which contains the State's long-term strategy for fire programs as required by the RH regulations. The May 26, 2011 submittal supersedes and replaces SIP revisions to section XX.G of the RH SIP submitted by the State on December 12, 2003 and September 9, 2008. This action is being taken under section 110 of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2011-0636. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website.

Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6144, [dygowski.laurel@epa.gov](mailto:dygowski.laurel@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials SIP mean or refer to State Implementation Plan.
- (iv) The words Utah and State mean the State of Utah.

#### **Table of Contents**

## I. Background Information

## II. Final Action

## III. Statutory and Executive Order Reviews

### **I. Background Information**

Under 40 CFR 51.309 of the RH program, there are numerous requirements aimed at protecting the 16 Class I areas of the Colorado Plateau. This action only addresses the requirements pertaining to programs related to fire of 40 CFR 51.309(d)(6). Pursuant to 40 CFR 51.309(d)(6), a state must show that its smoke management program and all federal or private programs for prescribed fire in the state have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. A state must also ensure that its prescribed fire smoke management programs have at least the following seven elements: actions to minimize emissions, evaluation of smoke dispersion, alternatives to fire, public notification, air quality monitoring, surveillance and enforcement, and program evaluation.

States must include in their section 309 plan a statewide process for gathering the essential post-burn activity information to support emissions inventory and tracking systems. States must identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. The SIP must include an enhanced smoke management program, which means the smoke management program considers visibility and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. States must also adopt a process to establish annual emission goals to minimize emission increases from fire.

On December 12, 2003, the State of Utah submitted a RH SIP intended to meet all of the requirements under 40 CFR 51.309. This submittal adopted SIP section XX- *Regional Haze* as well as UAC R307-204 *Emissions Standards: Smoke Management*. The State revised the smoke management requirements of R307-204 in a May 8, 2006 submittal and then again in its September 29, 2011 submittal. The September 29, 2011 submittal supersedes and replaces the R307-204 portion of the December 12, 2003 submittal and all of the May 8, 2006 submittal. R307-204 contains provisions necessary to meet the requirements of 40 CFR 51.309(d)(6) which pertain to smoke management.

Section XX.G – *Long-Term Strategy for Fire Programs* of the State’s RH SIP also contains provisions necessary to meet the requirements of 40 CFR 51.309(d)(6). The State originally submitted Section XX.G with its December 12, 2003 RH SIP submittal. The State resubmitted this section with subsequent SIP revisions on September 9, 2008 and May 26, 2011. Section XX.G of the May 26, 2011 submittal supersedes and replaces section XX.G of the December 12, 2003 and September 9, 2008 submittals. EPA will be taking action on the remainder of the December 12, 2003, September 9, 2008, and May 26, 2011 submittals at a later date.

On November 8, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Utah (76 FR 69217). The NPR proposed approval of the smoke management requirements adopted by the State as part of the September 29, 2011 (R307-204) and May 26, 2011 (section XX.G) SIP submittals.

## **II. Final Action**

EPA is approving a SIP revision submitted by the State of Utah on September 29, 2011. The September 29, 2011 revision establishes UAC R307-204. R307-204 contains smoke

management requirements for land managers within the State of Utah as required by 40 CFR 51.309(d)(6) for regional haze. The September 29, 2011 submittal supersedes and replaces R307-204 submitted as part of the State's December 12, 2003 regional haze SIP. The September 29, 2011 submittal also supersedes and replaces the State's May 8, 2006 submittal of R307-204. EPA is also partially approving a SIP revision submitted by the State of Utah on May 26, 2011. Specifically, EPA is approving section XX.G of the State's RH SIP which contains the State's long-term strategy for fire programs as required by 40 CFR 51.309(d)(6). The May 26, 2011 submittal supersedes and replaces SIP revisions to section XX.G of the RH SIP submitted by the State on December 12, 2003 and September 9, 2008.

### **III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 8, 2012

James B. Martin  
Regional Administrator  
Region 8

40 CFR part 52 is amended to read as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT – Utah

2. Section 52.2320 is amended by adding paragraph (c)(72) to read as follows:

**§52.2320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(72) On May 26, 2011 and September 29, 2011, the State of Utah submitted revisions to its State Implementation Plan to incorporate the smoke management requirements of the regional haze program.

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality*, Rule R307-204 - *Emission Standards: Smoke Management*, sections -1, *Purpose and Goals*, and -2, *Applicability*. Effective December 31, 2003; as published in the Utah State Bulletin October 1, 2003 and January 15, 2004.

(B) Title R307 of the Utah Administrative Code - *Environmental Quality, Air Quality*, Rule R307-204 - *Emission Standards: Smoke Management*, section -4, *General Requirements*. Effective April 7, 2006; as published in the Utah State Bulletin March 1, 2006 and May 1, 2006.

(C) Title R307 of the Utah Administrative Code, Rule R307-204 – *Environmental Quality, Air Quality*, Rule R307-204 – *Emission Standards: Smoke Management*,



sections -3, *Definitions*, -5, *Burn Schedule*, -6, *Small Prescribed Fires (de minimis)*, -7, *Small Prescribed Pile Fires (de minimis)*, -8, *Large Prescribed Fires*, - 9, *Large Prescribed Pile Fires*, and -10, *Requirements for Wildland Fire Use Events*. Effective July 7, 2011; as published in the Utah State Bulletin May 1, 2011 and August 1, 2011.

(ii) Additional materials.

(A) Section XX.G of the Utah *Regional Haze State Implementation Plan*. Effective April 7, 2011. Published in the Utah State Bulletin February 1, 2011.

[FR Doc. 2013-00362 Filed 01/17/2013 at 8:45 am; Publication Date: 01/18/2013]